In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 17608 of 2006
Date of Decision: 9.11.2006

Madhusudan

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Tara Chand Dhanwal, Advocate,
for the petitioner.

JUDGMENT

M.M. KUMAR, J. (Oral)

The wife of the petitioner, who was working as Staff Nurse, died while in harness on 17.5.2001. The petitioner being the dependent husband was appointed on a Class-IV post on compassionate grounds and he joined as such on 16.9.2003. He submitted an application on 30.12.2003 (P-8) that he should be granted appointment on a Class-III post as has been done in the cases of a number of other persons who are similarly situated to the petitioner. On his insistence by sending another memorandum on 20.8.2004 (P-9), respondent Nos. 2 and 3 appears to have initiated some action against those appointed on a Class-III posts on compassionate appointment with regard to the irregularities pointed

out by the petitioner. However, the prayer made in this petition is that the petitioner has a right to be appointed on a Class-III post and in that regard reliance has been placed on instructions dated 8.5.1995 (P-1).

Having heard the learned counsel, we are of the considered view that there is no merit in this petition. It is well settled that the compassionate appointment is granted on the death of the bread earner of the family to the dependent family member or the spouse in order to tide over the financial crises created by the sudden death. The object of compassionate appointment is not to create a source of recruitment by making a dent in the general source as per Article 14 and 16(1) of the Constitution. The law has tolerated these type of compassionate appointments only to allow the family to emerge out of a financial crises created by the death of the bread earner of the family. It has been repeatedly observed by Hon'ble the Supreme Court that compassionate appointment cannot be claimed as a right and number of factors come in the way in appointing a person. For the aforementioned propositions we place reliance on the judgments of Hon'ble the Supreme Court in the cases of **National Hydro Electric Power Corporation v. Nanak Chand, (2004) 12 SCC 487; Hindustan Aeronautics Limited v. A. Radhika Thirumalai, (1996) 3 SCC 394; State of Manipur v. Mohd. Rajaodin, (2003) 7 SCC 511; and Commissioner of Public Instructions v. K.R. Vishawanathan, (2005) 7 SCC 206**. In the present case, the petitioner has been appointed as a Ward Boy which

is stated to be a Class-IV post. He is getting adequate salary which is sufficient to overcome the situation. There is no rule of law requiring that the petitioner must be given appointment on a Class-III post either equivalent to the one given to his wife or on a post with salary a step below than that of his wife. The instructions dated 8.5.1995 (P-1) have been completely misunderstood by the petitioner. In Clause 2(i) the expression used is that ex-gratia employee is to be confined to Class-III and Class IV posts only, irrespective of the status of the deceased employee. It has further been clarified that the compassionate employment which is to be offered must be at least one step lower than that of the deceased employee. The aforementioned clause 2.1 of the policy dated 8.5.1995 (P-1) reads as under:

> "1) Ex-gratia employee shall be confined to Class III and Class IV posts only, irrespective of the states (status?) of the deceased employee. Further the compassionate employee being offered shall be at least on (one?) step lower than that of the deceased employee in case where the deceased employee was working at the lowest level in the Government."

It cannot be interpreted to mean that the petitioner must be given employment a step below than his deceased wife. The provision could only mean that the appointment must be at least one step lower than that of the deceased employee. It means that it has to be at least one step lower and it can even be lower more than one

step. The policy instructions must be interpreted in the light of the view taken by Hon'ble the Supreme Court as laid down in the above quoted judgments. We are of the view that the policy instructions so interpreted would be consistent with the view of Hon'ble the Supreme Court. Even otherwise there is a huge delay in approaching this Court as the petitioner was given appointment as a Ward Boy on 16.9.2003 and as on the date of filing of the petition a period of more than three years has gone by, which would constitute a good ground for refusing the relief claimed, as laid by Hon'ble the Supreme Court in **State of M.P. v. Bhailal Bhai, AIR 1964 SC 1006**.

For the aforementioned reasons, this petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)

November 9, 2006
JUDGE

Pkapoor